Upper Tribunal
(Immigration and Asylum Chamber)

Banger (EEA: EFM - Right of Appeal) [2019] UKUT 00194(IAC)

THE IMMIGRATION ACTS

Heard at Field House

Decision promulgated on:

20 th March 2019

Before

THE PRESIDENT, THE HON. MR JUSTICE LANE

UPPER TRIBUNAL JUDGE RIMINGTON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ROZANNE BANGER

Respondent

Representation

For the Appellant: Mr Eric Metcalfe, Counsel instructed by the Treasury Solicitor

For the Respondent: Mr A Metzer QC and Ms S Saifolahi Counsel acting pro bono

The Immigration (European Economic Area) Regulations 2016 ('the 2016 Regs') specifically excluded a right of appeal for Extended Family Members ('EFMs'). The 2016 Regs have been amended pursuant to the Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019, with effect from 29 th March 2019, so as to provide EFMs with a right of appeal. This does not have retrospective effect.

It is open to those EFMs against whom a decision was made under the 2016 Regs but before 29 March 2019 to request a new decision from the Secretary of State in order to generate a right of appeal.

Alternatively the EFM may invoke the doctrine of direct effect under EU law in relation to a decision which falls into the lacuna between the 2006 regulations and the amended 2016 regulations, and apply under rule 20 of the Tribunal Procedure (First-tier Tribunal) (IAC) Rules 2014 for an extension of time to provide a notice of appeal to that Tribunal.

DECISION

1.

While the application for permission to appeal was made by the Secretary of State, we shall refer to the parties as they were described before the First-Tier Tribunal.

2.
The full background to this appeal is set out in the reported decision Banger (Unmarried Partner of British National) [2017] UKUT 00125(IAC) and will not be repeated here save for context.

The history

3.
The essential facts were not in dispute. Simply put, the appellant, a South African national, appealed against the refusal of a residence card under the Immigration (European Economic Area) Regulations 2006. Her partner, Mr Rado, is a British national with whom she formerly resided in South Africa, from January 2008. In May 2010, both migrated to The Netherlands, where her partner worked. They lived together in The Netherlands for five years and the Appellant was granted a Dutch residence card in her capacity of an extended family member (EFM) of an EU citizen. Three years later the Appellant and her partner decided to move together to the United Kingdom. Prior to moving, the Appellant applied to the Secretary of State for the Home Department (the "Secretary of State") for a residence card. On 26 September 2013, that application was refused in the following terms:

" Your application has been considered under regulation 9 which states that to qualify as the family member of a British citizen you must show that you are either the spouse or civil partner of the British citizen. An unmarried partner is not recognised as the family member of a British Citizen. You do not have a basis of stay in the United Kingdom under the Immigration (European Economic Area) Regulations 2006 ."

4.
The Appellant appealed to the First-tier Tribunal (" FtT "), which allowed her appeal. The Secretary of State was granted permission to appeal. The grant of permission to appeal is couched in the following terms:

The Secretary of State for the Home Department contends that, in holding that the Surinder Singh principles apply to unmarried partners, the Judge erred in law. The Secretary of State for the Home Department further contends that, in relying on an unreported decision of the Upper Tribunal (Cain ……. Appeal Number IA/40868/2013), which apparently held that the Surinder Singh principle did apply to persons in a durable relationship), the Judge erred in law."

5.
The key question of law raised was whether the Appellant, being the non-EU partner of a British citizen/EEA national who had exercised his EU Treaty rights in another EU state but who was now returning to his member State of origin, enjoyed the benefit of the ' Surinder Singh ' principle, whereby the spouse of such an EU national is entitled to enter and reside in that national's State of origin. The Secretary of State submitted that the Surinder Singh principle did not apply to unmarried partners or extended family members of EU citizens but was confined to spouses.

6.
In 2017 the Upper Tribunal stayed the proceedings and referred the following questions to the CJEU for a preliminary ruling under Article 267 TFEU :

(1) Do the principles contained in the decision in Immigration Appeal Tribunal and Surinder Singh, ex parte Secretary of State for the Home Department (Case C-370/90) [1992] operate so as to require a

Member State to issue or, alternatively, facilitate the provision of a residence authorisation to the non-Union unmarried partner of a EU citizen who, having exercised his Treaty right of freedom of movement to work in a second Member State, returns with such partner to the Member State of his nationality?

(2) Alternatively, is there a requirement to issue or, alternatively, facilitate the provision of such residence authorisation by virtue of European Parliament and Council Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States ("the Directive")?

(3) Where a decision to refuse a residence authorisation is not founded on an extensive examination of the personal circumstances of the Applicant and is not justified by adequate or sufficient reasons is such decision unlawful as being in breach of Article 3(2) of the Citizens Directive?

(4) Is a rule of national law which precludes an appeal to a court or tribunal against a decision of the executive refusing to issue a residence card to a person claiming to be an extended family member compatible with the Directive?

7.
On 12 th July 2018 the CJEU gave a ruling on the interpretation of the Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States: Secretary of State for the Home Department v Banger (Citizenship of the European Union - Right of Union citizens to move and reside freely within the territory of the European Union - Judgment) [2018] EUECJ C-89/17 (12 July 2018) .

First and Second Questions

8.
The first and second questions were answered by the CJEU at paragraphs 18 to 35 of the judgment.

9.
It was observed that the Directive could not confer a derived right of residence on third country nationals who were family members in the Member State of which that citizen was a national. The Court acknowledged, however, in certain cases, third country nationals as family members of a Union citizen, who were not eligible on the basis of the Directive for a derived right of residence, could be accorded such a right on the basis of Article 21(1) of the TFEU (see Coman and others [2018] EUECJ C-673/16 (5 June 2018)). If no such right was granted, a Union citizen would be discouraged from leaving the Member State of which he was a national to exercise his right of residence in another Member State.

10.
Ms Banger, as a partner in a durable relationship and not a spouse or civil partner, was not considered to be a 'family member' as defined by Article 2(2) of the Directive. However, Article 3(2) (b) of the Directive related to partners in a durable relationship and although Article 3(2) of the Directive did not require the Member States to accord a right of entry and residence to third country nationals who were partners in a durable relationship (in contrast with family members), it nevertheless imposed an obligation on those Member States to confer certain advantages on applications submitted by those third country nationals.

11.
In conclusion at paragraphs 33- 35 the CJEU stated:-

‘33 In a situation such as that in question in the main proceedings, Directive 2004/38, including point (b) of the first subparagraph of Article 3(2) thereof, must be applied by analogy as regards the conditions in which the entry and residence of third-country nationals envisaged by that directive must be facilitated.

34 That conclusion cannot be called in question by the United Kingdom Government’s argument according to which, in paragraph 63 of the judgment of 12 March 2014, O. and B. (C-456/12, EU:C:2014:135), the grant of a derived right of residence in the Member State of origin was confined solely to third-country nationals who are a ‘family member’ as defined in Article 2(2) of Directive 2004/38. As the Advocate General observed in point 35 of his Opinion, although in that judgment the Court held that a third-country national who does not have the status of a family member may not enjoy, in the host Member State, a derived right of residence under Directive 2004/38 or Article 21(1) TFEU, that judgment does not, however, exclude the obligation for that Member State to facilitate the entry and residence of such a national in accordance with Article 3(2) of that directive.

35 In the light of the foregoing considerations, the answer to the first and second questions is that Article 21(1) TFEU must be interpreted as requiring the Member State of which a Union citizen is a national to facilitate the provision of a residence authorisation to the unregistered partner, a third-country national with whom that Union citizen has a durable relationship that is duly attested , where the Union citizen, having exercised his right of freedom of movement to work in a second Member State, in accordance with the conditions laid down in Directive 2004/38, returns with his partner to the Member State of which he is a national in order to reside there.

Third Question

12.
The CJEU concluded that Member States should ensure that those third country nationals who were unregistered partners of Union citizens, who had exercised the right of freedom of movement to work in a second Member State in accordance with the Directive, should be able to obtain a decision with reasons founded on an extensive examination of their personal circumstances. States had a wide discretion as to the factors to be taken into account, but they should ensure that their national legislation contained criteria which were consistent with the normal meaning of the term ‘facilitate’ and which did not deprive the provision of its effectiveness.

The fourth question

13.
The Court considered whether persons governed by Article 3(2), which includes extended family members, required a redress procedure whereby matters of both fact and law may be reviewed by the national court or tribunal. It noted that a differently constituted Upper Tribunal had found that there was no right of appeal under the Immigration (European Economic Area) Regulations 2006. The Court found, however, that Member States must make it possible for those to whom Article 3(2) applied, to obtain a decision on their application that was founded on an extensive examination of their personal circumstances and in the event of refusal was justified by reasons. Further to the Directive and Article 47 of the Charter of Fundamental Rights of the EU, there must be an effective judicial remedy against a decision ‘permitting a review of the legality of that decision as regards matters of both fact and law in the light of EU law’ (Gaydarov [2011] EUECJ C-430/10 (17 November 2011)).

14.
At [52] the Court held

‘In the light of the foregoing considerations, the answer to the fourth question is that Article 3(2) of Directive 2004/38 must be interpreted as meaning that the third-country nationals envisaged in that provision must have available to them a redress procedure in order to challenge a decision to refuse a residence authorisation taken against them, following which the national court must be able to ascertain whether the refusal decision is based on a sufficiently solid factual basis and whether the procedural safeguards were complied with. Those safeguards include the obligation for the competent national authorities to undertake an extensive examination of the applicant’s personal circumstances and to justify any denial of entry or residence’.

The Resumed Hearing before the Upper Tribunal on 20 th March 2019

15.
The parties were directed to make written submissions for the resumed hearing.

16.
On 11 th March 2019, the Secretary of State confirmed that on 8 th March 2019 he had written to the appellant’s legal representatives advising that she would be issued with a residence card and on that basis the Secretary of State invited the appellant to agree to ‘summary disposal’. The Government Legal Department wrote to the appellant’s representatives in the following terms.

‘ After careful consideration, the SSHD can confirm that they will arrange to issue your client with a residence card on the accepted facts of her case.

Although the SSHD has not yet finalised the finer details of implementing [of] the judgement of the CJEU, he can confirm that it was indicated in his detailed grounds of defence in the lead cases, regarding the appeal rights issues of Extended Family Members who are refused residence cards, Prendi (CO/2339/2018) and Ul Hassan (CO/1000/2018), that the SSHD intends to lay before Parliament legislation amending the 2016 regulations as soon as reasonably practicable, in order to reintroduce appeal rights for extended family members. The reintroduction of appeal rights is of course subject to Parliamentary approval. Since your client will be issued with a residence card no issue can arise in this case as to the lawfulness of the appeal provisions in the Immigration (EEA) Regulations 2016.

For the above reasons, the SSHD considers that in the circumstances, the most appropriate course of action is for the matter to be summarily disposed of by consent and the hearing listed in March 2019 vacated’.

17.
The position statement of the Secretary of State referred to paragraph 52 of the CJEU judgement in Banger and advanced that the appeal was now academic and the fourth question regarding any right of appeal to the Tribunal was ‘ no longer relevant in the present case’ .

18.
The statement went on to say that the instant proceedings were governed by the Immigration (European Economic Area) Regulations 2006, which as the Supreme Court had now established in SM (Algeria) [2018] UKSC 9, did provide a right of appeal in cases of this nature. The Supreme Court had effectively overruled Sala (EFMs: Right of Appeal) [2016] UKUT 00411 (IAC), which had previously found there was no right of appeal for extended family members. As the appellant would be issued with a residence card, the Secretary of State contended that no issue could arise in this case as to the lawfulness of the appeal provisions in the Immigration (European Economic Area) Regulations 2016.

19.
Although the Secretary of State had yet to finalise completely the implementation of the CJEU's decision, he intended to lay before Parliament legislation amending the 2016 EEA Regulations as soon as practicable in order to reintroduce appeal rights for EFMs. That reintroduction was of course subject to Parliamentary approval.

20.
The appellant's representatives responded in writing to this overture by the Secretary of State and objected to summary disposal. It was submitted that there was no timeframe for issuing the residence card and that the appeal was not merely academic. The (European Economic Nationals) (EU Exit) Regulations 2019 had been laid before Parliament on 7 th March 2019 and by provision 3 amended the 2016 EEA Regulations by 'reinstating the right of appeal for EFMs and extending Regulation 9 to Extended Family Members of British Nationals'. Those draft Regulations were attached.

21.
The appellant's representatives pointed out that further to rule 39 of The Tribunal Procedure (Upper Tribunal) Rules 2008 the parties (obviously) must consent to any consent order and this aspect was ultimately subject to the jurisdiction of the Upper Tribunal. The chronology of this case was characterised by delay and the appellant was refused a residence card as long ago as 26 th September 2013. Following and appeal to the First-tier Tribunal, the appeal was finally heard by the Upper Tribunal on 13 th April 2016. On 19 th August 2016 Sala was promulgated and a reference in these proceedings was made to the CJEU on 20 th January 2017. In November 2017, Khan v SSHD [2017] EWCA Civ 1755 had overturned Sala .

22.
The appellant's representatives argued that the CJEU delivered judgment (as above) in these proceedings on 12 th July 2018. The Upper Tribunal issued Case Management Review Hearing Directions on 19 th September 2018 and 28 th February 2019, but not until 11 th March 2019 was the Secretary of State's position statement filed and served. The Secretary of State did not update the appellant for nearly 8 months and only post the laying of the legislative amendments. This delay and discourtesy had caused the appellant and her partner considerable distress. She had not been advised that the CJEU judgment was to be acted upon. The amendments to the legislative framework would come into force on 28 th March 2019 and were a direct result of the CJEU judgment. A significant number of cases had been stayed behind this instant case and this was a reported case of considerable public interest and importance. The Secretary of State's approach from the time of the CJEU judgment to date had substantially contributed to delay, cost and uncertainty to the appellant. The Tribunal was invited to allow the appeal on all grounds with full reasons and there should be no summary disposal.

23.
The hearing was not vacated, and oral submissions were made. At the hearing we drew the attention of the parties to SM (withdrawal of appealed decision: effect) Pakistan [2014] UKUT 00064 (IAC), the italic summary of which reads as follows:

'(1) Rule 17 (withdrawal) of the Tribunal Procedure (Upper Tribunal) Rules 2008 does not enable the Upper Tribunal to withhold consent to the withdrawal by the Secretary of State of the decision against which a person appealed to the First-tier Tribunal.

(2) Where such a decision is withdrawn in appellate proceedings before the Immigration and Asylum

Chamber of the Upper Tribunal, that Tribunal continues to have jurisdiction under the Tribunals, Courts and Enforcement Act 2007 to decide whether the determination of the First-tier Tribunal should be set aside for error of law and, if so, to re-make the decision in the appeal, notwithstanding the withdrawal of the appealed decision. Such a withdrawal is not, without more, one of the ways in which an appeal under section 82 of the Nationality, Immigration and Asylum Act 2002 ceases to be pending.

(3) When re-remaking a decision in a 2002 Act appeal where the decision against which a person appealed has been withdrawn by the Secretary of State, the Upper Tribunal will need to decide whether:-

(i) to proceed formally to dismiss (or, in certain circumstances, allow) the appeal; or

(ii) to determine the appeal substantively, including (where appropriate) making a direction under section 87 of the 2002 Act.

(4) In deciding between (i) and (ii) above, the Upper Tribunal will apply the overriding objective in rule 2 of the 2008 Rules, having regard to all relevant matters, including:-

(a) the principle that the Secretary of State should, ordinarily, be the primary decision-maker in the immigration field;

(b) whether the matters potentially in issue are such as to require the Tribunal to give general legal or procedural guidance, including country guidance;

(c) the reasons underlying the Secretary of State's withdrawal of the appealed decision;

(d) the appeal history, including the timing of the withdrawal; and

(e) the views of the parties'.

24.
In effect, the actions of the Secretary of State had superseded his decision to refuse to issue the card but following the reasoning in SM , the Tribunal retained jurisdiction. We observed that the present case thus appeared to be 'on all fours' with SM, although Mr Metzer attempted to persuade us that the Secretary of State had not attempted to withdraw in a timely manner.

25.
Mr Metzer argued that the Secretary of State had already (the day before) laid the Regulations by the date of the letter to the appellant, and yet that letter failed to mention this fact. There had been silence from the Secretary of State towards the appellant from the date of the CJEU judgment until 8 th March 2019. The overriding objective of The Tribunal Procedure (Upper Tribunal) Rules 2008 now required a full reasoned judgment from the Tribunal. Summary disposal was inadequate. The delay by the Secretary of State was inexcusable and there was no need to have waited 8 months to amend the national legislation, following the CJEU judgment. The Secretary of State had implicitly conceded the appeal. There was no reason why the amending Regulations should only apply from 28 th March 2019 and they should have retrospective effect. Post Khan, extended family members ('EFMs') had a right of appeal, but this related only to the 2006 EEA Regulations and not to the 2016 EEA Regulations.

This would have implications for statutory appeals and judicial review. Mr Metzer made clear that there was no application for costs on the part of the appellant. We were also asked to rule on procedure where the decision had not been classically withdrawn. The appellant wanted a fully-reasoned decision.

26.
Mr Metcalfe argued that the retrospective effect of the new Regulations was not an issue for the appellant, whose appeal, under the 2006 Regulations, was not in question. Regulations such as the ones just laid did not need to be retrospective, as the judgment of the CJEU had direct effect. It was open to an appellant to rely on that judgment. Mr Metcalfe apologised for the delay in updating the appellant, but the Secretary of State was attempting to resolve matters. Nothing was to be drawn from the wording in the letter from the GLD that the Secretary of State 'intends' to lay Regulations; merely that the GLD not fully apprised of the precise position regarding the laying of the Regulations. There was no manipulation of events. The prospective Regulations addressed various matters in the same legislative vehicle. There was no right of the appellant to be consulted on the drafting of those Regulations. The CJEU's decision was binding on all courts and tribunals and there was no lingering interest in the disposal from other courts such as the Supreme Court. The CJEU spoke for itself and the ruling was clear and binding. The Secretary of State had now laid Regulations. There was no dispute between the parties. The appellant had or was about to receive a residence card. The delay point did not necessitate a reasoned decision. If, however, the Tribunal was minded to produce such a decision, there would be no objection from the Secretary of State. There was no matter of law outstanding.

Discussion

27.
The Tribunal cannot dispose of the appeal of by way of consent under rule 39 as the appellant did not consent to that method of disposal.

28.
We agree that the decision of the Secretary of State dated 26 th September 2013, the target of the statutory appeal, had not been formally withdrawn but has been effectively superseded by the acknowledgment of the findings of the CJEU and the issue of the residence card. Further to SM , however, we consider the Tribunal retains jurisdiction to decide the appeal, notwithstanding the Secretary of State's actions.

29.
Bearing in mind the overriding objective and having regard to the long duration of the present proceedings not least through the reference to the CJEU, we did not consider that a summary disposal was appropriate. As we have noted, Mr Metcalfe did not object to a reasoned judgment being given and, in the circumstances, we consider it is appropriate to issue a full judgment. There has been a considerable lapse of time since the initial decision in 2013 and we appreciate that the appellant has experienced ongoing uncertainty in connection with her immigration status. We were advised that she was granted entry clearance as a spouse under the Immigration Rules in November 2016, but this was for limited leave to remain only and is due to expire shortly. We understand the appellant has been assured in writing by the Secretary of State that she will be granted a residence card imminently.

30.
The application for permission to appeal was granted to the Secretary of State on the basis that the First-tier Tribunal materially erred in law and misdirected itself by extending the Surinder Singh

principle to unmarried partners. It was argued that Surinder Singh referred to spouses only. The Upper Tribunal set aside the First-tier Tribunal decision on 8 th January 2016 and on rehearing stayed the appeal and referred the matter to the CJEU. On 12 th July 2018 the CJEU ruled unequivocally that the Surinder Singh principle does extend to unmarried partners in a durable relationship as envisaged by Article 3(2) (b) of the Directive.

31.
The appellant was entitled to an appeal under the 2006 EEA Regulations. Although the question was placed in doubt by Sala , Khan v SSHD [2017] EWCA Civ 1755 held that Sala was wrongly decided and that the First-tier Tribunal (IAC) had jurisdiction to hear an appeal from a refusal by the Secretary of State for the Home Department to exercise her discretion to grant a residence card to a person claiming to be an extended family member **.** Khan was decided in relation to the 2006 EEA Regulations only, but prior to the CJEU's judgment in Banger . The Supreme Court in SM (Algeria) (Appellant) V Entry Clearance Officer, United Kingdom Visa Section [2018] UKSC 9, specifically approved Khan .

32.
In view of that judgment and the new Regulations, Mr Metcalfe argued that there was no legal issue between the parties. The Immigration (European Area Nationals) (EU Exit) Regulations 2019 came into force on 28 th March 2019. Those Regulations amend the definition of an EEA decision in order to include decisions refusing to issue documents under Regulations 12(4), (EEA family permit to extended family member), 17(5) (registration certificate for extended family member) and 18(4) (residence card for extended family member).

33.
At present Regulation 9 reads as follows:-

9. — (1) If the conditions in paragraph (2) are satisfied, these Regulations apply to a person who is the family member ("F") of a British citizen ("BC") as though the BC were an EEA national

34.
Regulation 9 of 2016 Regulations is amended to include a reference to extended family members with the addition of this new paragraph:

'(1A) These Regulations apply to a person who is the extended family member ("EFM") of a BC as though the BC were an EEA national if –

(a)
The conditions in paragraph (2) are satisfied; and

(b)
The EFM was lawfully resident in the EEA State referred to in paragraph (2)(a)(i)."

35.
In addition, regulation 36 of the 2016 Regulations, entitled 'Appeal Rights' now includes a reference at regulation 36(6) to EFMs. These amended provisions overall reflect the judgment of the CJEU and grant a right of appeal to EFMs to the First-tier Tribunal from relevant refusal decisions (see above).

36.
The question remains as to the position of those EFMs for whom the decision and thus right of appeal, neither falls under the 2006 Regulations nor under the amended provisions. The 2016 EEA

Regulations specifically excluded a right of appeal for EFMs and the EEA (EU Exit) Regulations 2019 amend that legislation but, as we have seen, not retrospectively.

37.
Accordingly, this new right of appeal does not affect those who received a decision from the Secretary of State which post-dated the 2006 Regulations or was not caught by the transitional provisions of the 2016 Regulations and predates the introduction of the new right of appeal.

38.
We consider that it is open to those so affected to request a new decision from the Secretary of State which would generate a new right of appeal following 29 th March 2019.

39.
Nonetheless, Mr Metcalfe confirmed that the CJEU ruling has direct effect and we observe that this direct effect must extend to the finding in the CJEU judgment in relation to appeals which in conclusion was as follows:-

'Article 3(2) of Directive 2004/38 must be interpreted as meaning that the third-country nationals envisaged in that provision must have available to them a redress procedure in order to challenge a decision to refuse a residence authorisation taken against them, following which the national court must be able to ascertain whether the refusal decision is based on a sufficiently solid factual basis and whether the procedural safeguards were complied with. Those safeguards include the obligation for the competent national authorities to undertake an extensive examination of the applicant's personal circumstances and to justify any denial of entry or residence'.

40.
There are two points which indicate from the judgment that a full merits appeal and thus a statutory appeal is required. First, the judgment refers to a redress procedure which must be able to decide whether the refusal decision was founded on a sufficiently solid factual basis . The nature of that redress procedure is more aligned with the process in a statutory appeal than judicial review. Secondly, the Secretary of State has effectively recognised this aspect of the judgment by producing legislation in express recognition of that ruling, which offers a statutory appeal.

41.
The doctrine of direct effect means that where an obligation is sufficiently clear, precise, and unconditional it is capable of direct enforcement under the 'vertical direct effect' concept. Individuals who have free movement rights or who otherwise are able to invoke EU law, such as EFMs, which the UK has failed to implement in its domestic legislation, may invoke the doctrine.

42.
As set out in Dieter Kraus v Land Baden-Württemberg [1993] EUECJ C-19/92 and with respect to Articles 48 and 52 of the EEC Treaty (as they then were).

'31. Furthermore, Member States are required, in conformity with Article 5 of the Treaty [now article 5 CFEU], to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaty and to abstain from any measures which could jeopardize the attainment of the objectives of the Treaty.

43.
It is open to those who received a decision which falls between the 2006 Regulations and the introduction of the new right of appeal, to apply under rule 20 of the Tribunal Procedure (First-tier

Tribunal) (Immigration and Asylum Chamber) Rules 2014 for an extension of time to provide a notice of appeal to that Tribunal. It would be open to the First-tier Tribunal to consider whether to extend time to facilitate those appeals by applying the overriding objective under rule 2 of the 2014 Rules, which charges the Tribunal ‘to deal with cases fairly and justly’.

44.
Turning to the instant appeal, we find that it has been established that the Surinder Singh principle operates so as to require the Secretary of State to facilitate the provision of a residence authorisation to the non-Union unmarried partner of an EU citizen. The decision of the First-tier Tribunal which was under appeal was in fact set aside by the Upper Tribunal on 8 th January 2016. Owing to the judgment given by the CJEU and the reasoning given above, we re-make the decision by allowing the appellant’s appeal under the Immigration (European Economic Area) Regulations 2006.

Decision

Appeal allowed.

Signed Helen Rimington.

Upper Tribunal Judge Rimington